NO. 82574-2

SUPREME COURT
OF THE STATE OF WASHINGTON

LITTLE MOUNTAIN ESTATES
TENANT ASSOCIATION, et al.,

Respondents,

v.

LITTLE MOUNTAIN ESTATES MHC LLC, et al.,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION

The purpose of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA) is to give low-income seniors and citizens stable, affordable housing. Washington Real Property Deskbook § 15.3 (3d ed. 1997). When first enacted in 1977, the law sought primarily to prevent unfair retaliatory evictions, which could be very costly for tenants. SB 2268 Judiciary Committee Report, March 25, 1977, appended hereto at Appendix A. The Legislature recognized the unique factual circumstances of the manufactured/mobile home landlord – tenant relationship: the tenant owns a manufactured home as personal property, but rents the land upon which it sits from the owner of the real property. *Id.* Over the years, both the Legislature and the Courts of Appeal have sought to achieve a practical balance between the needs of tenants and owners of manufactured home communities.

Like the manufactured home landlord/tenant relationship itself, the factual scenario of this case is unique. The tenants here received 25-year rent-controlled leases that provided them with dependable housing at a stable, low price, which is more than the MHLTA requires. In exchange, if the tenants sold their homes and assigned their leases, those leases would convert to one or two year terms.

Confronted with this unusual factual circumstance, the Court of Appeals ignored the language, policy, and purpose of the MHLTA and created a new provision: if lease assigned under the MHLTA is not for the same length as the original lease, regardless of what the parties agreed to, that agreement violates the MHLTA because the lease is not "assignable."

A better rule that will encourage longer leases is this: if a lease under the MHLTA provides a term longer than the required one year, and the parties agree that the term will convert to a one-year term or longer upon assignment, that lease provision does not violate the MHLTA.

B. ISSUE PRESENTED FOR REVIEW

Is a life estate lease "assignable" within the meaning of RCW 59.20.073 if it may be transferred to a buyer of the manufactured home leaving no reversionary interest in the seller and the assigned lease complies with the MHTLA?

C. STATEMENT OF THE CASE

Little Mountain Estates is an upscale manufactured home community. The manufactured homes installed there are pit set and landscaped and subject to covenants which are similar to a residential homeowners' association, so that home values increase, rather than decrease as in many traditional mobile home parks. The park has a clubhouse, swimming pool, recreational facilities, and a gated entrance.

When Little Mountain was first being developed in 1990-91, it struggled for tenants because of unstable economic and political factors. To fill the park, Little Mountain offered an extended rent-controlled lease, above and beyond what is required by the MHLTA. The 25-year lease was a "loss leader," which is "an item priced not for profit, but to attract customers." *Investor Glossary*, http://www.investorglossary.com/loss-leader.htm. Rent increases under the 25-year lease were tied to the Consumer Price Index. Rent under the 25-year leases was below cost, and did not even meet the basic operating expenses of the park.

From its inception in 1992, the unprofitable 25-year rent controlled lease was assignable as required by the MHLTA. But Little Mountain could not afford to offer this lease in perpetuity, or the park would be insolvent. So the leases included a plain, easy-to-read provision that they would convert to a one- or two-year term upon assignment. In this way, Little Mountain could eventually see some return on its initial investment in the park and stay in business.

The simple, three-page Little Mountain lease contained ¶ 6, which read: "ASSIGNMENT; SUBLETTING: This lease is assignable, providing that such assignment conforms with the limitations and language in Attachment 'B'. Subletting the manufactured home, the lot space, or any part thereof is not permitted." Attachment B contained clear

notification in large print of the provision converting the 25-year term to a one-year term upon assignment. Little Mountain prominently displayed copies of the lease in the park's clubhouse, and included it in advertising materials. Co-owner Kevin Ware said of the 25-year leases, "We would have put them as wallpaper in the bathroom if we could have."

The tenants were not without bargaining power over Little Mountain. Some tenants successfully negotiated provisions of the lease after move in. For example, one tenant had to build a longer driveway than other residents, and demanded reimbursement from Little Mountain. Although the tenant had assumed responsibility for installing his own driveway under the lease, Little Mountain nonetheless reimbursed him $1,000. At one point, another tenant went to the manager to sign his lease, and Little Mountain was only offering one-year leases at that time. The tenant insisted on a 25-year lease; Little Mountain gave him one.

When some tenants wanted to sell their homes, they became upset about the assignment clause. These tenants claimed that the assignment clause injured them, because it did not allow them to profit financially by marketing the extended rent-controlled lease to potential buyers.[1]

[1] There was evidence at trial that the tenants were not actually interested in selling their homes, but in purchasing the park from Little Mountain Estates. The tenant association leadership used this lawsuit as leverage in an attempt to force a sale of the park to themselves.

Judge Kenneth Cowsert held a bench trial and concluded that the lease was valid and enforceable. Judge Cowsert also awarded Little Mountain costs and reasonable attorney fees based on the lease terms and statutory provisions.

The tenants appealed to Division I of the Washington State Court of Appeals. The Court of Appeals concluded that the tenants agreed to the provision in attachment B, but that the attachment was of no effect because it violated RCW 59.20.073, which requires leases to be "assignable." *Little Mountain Estates Tenants Association et al. v. Little Mountain Estates MHC LLC*, 146 Wn. App. 549, 560 (2008).

This Court accepted Little Mountain Estates' petition for review.

D. SUMMARY OF ARGUMENT

Neither the express language, public policy, common law, nor the legislative history of the MHTLA supports the Court of Appeals' conclusion here. The long-established definition of "assignment" is that the tenant transfers all rights and obligations under the lease to a third party, leaving no reversionary interest in the assignor. That is precisely what the leases at issue provide for here.

The leases as written fulfill the public policy of the MHTLA of providing long-term, stable, secure, and affordable housing to tenants.

The Legislature specifically *omitted* from the statute language requiring lease assignments to be for the same term as the original lease.

The assignment clause does not violate the MHLTA. The Act does not prohibit tenants from agreeing to a different lease term upon assignment, as long as assignability is not waived, and the resulting assigned lease includes a term of at least one year.

E. ARGUMENT

(1) Standard of Review

Interpretation of a statute is a question of law that reviewed de novo. *In re Impoundment of Chevrolet Truck, WA License # A00125A ex rel. Registered/Legal Owner*, 148 Wn.2d 145, 154, 60 P.3d 53 (2002). The goal is to effectuate the legislature's intent and purpose as it is expressed in the act. *State v. Grays Harbor County*, 98 Wn.2d 606, 608, 656 P.2d 1084 (1983) (citing *In re Lehman*, 93 Wn.2d 25, 27, 604 P.2d 948 (1980)). In ascertaining legislative intent, this Court looks to the statutory scheme as a whole. *Auto. Drivers & Demonstrators Union Local 882 v. Dep't of Ret. Sys.*, 92 Wn.2d 415, 420, 598 P.2d 379 (1979), *cert. denied*, 444 U.S. 1040, 100 S. Ct. 724, 62 L.Ed.2d 726 (1980).

When interpreting a statute, this Court first determines whether its language is ambiguous; that is, whether it is capable of more than one reasonable interpretation. *Vashon Island Comm. for Self-Gov't v. Wash.*

State Boundary Review Bd. for King County, 127 Wn.2d 759, 771, 903 P.2d 953 (1995). If the language is plain and unambiguous, the meaning can be ascertained from the statute itself. *Grays Harbor County,* 98 Wn.2d at 608 (citing *Lehman,* 93 Wn.2d at 27; *Garrison v. Wash. State Nursing Bd.,* 87 Wn.2d 195, 196, 550 P.2d 7 (1976)).

If the statutory language is ambiguous or unclear, this Court may look to legislative history to discern legislative intent. *Id.* at 607-08 (citing *Whitehead v. Dep't of Soc. & Health Servs.,* 92 Wn.2d 265, 268, 595 P.2d 926 (1979); *Ropo, Inc. v. City of Seattle,* 67 Wn.2d 574, 577, 409 P.2d 148 (1965); *Garrison,* 87 Wn.2d at 196).

(2) The Plain Language of the MHLTA Is Not Ambiguous and Does Not Prohibit the Provision at Issue; the Court of Appeals Misconstrued the Statute

The MHLTA requires leases to be "assignable." RCW 59.20.073. It also allows the landlord and tenant to agree on the length of a lease (month-to-month is allowed by written waiver of the tenant). RCW 59.20.050. If the agreement is oral, the default term is one year. *Id.*

The Court of Appeals below reasoned that an assignee of a contract "steps into the shoes of the assignor' " and has all the rights of the assignor, including all applicable statutory rights, citing *Puget Sound Nat'l Bank v. State Dep't of Revenue*, 123 Wn.2d 284, 292, 868 P.2d 127 (1994). *Little Mountain,* 146 Wn. App. at 560. The Court of Appeals thus held

that, by definition, a lease that upon assignment changes any of the provision of the original terms is not "assignable." *Id.* The Court reasoned that if an assigned lease is for less than the full remainder of the term granted to the original lessee, it is not "assignable" by definition. *Id.* Therefore, the Court concluded, a lease modified upon assignment is not an "assignable" lease, and thus violates RCW 59.20.073. *Id.* In doing so, the Court of Appeals failed to recognize what it already had observed in *McGahuey*: the MHLTA does not require that all original lease terms remain in force for the duration of any tenancy. *McGahuey v. Hwang,* 104 Wn. App. 176, 183, 15 P.3d 672 (2001).

Even using the Court of Appeals' reasoning, the lease at issue is assignable. The assignee does in fact step into the assignor's shoes, and incur all of the rights and obligations of the assignor, including the assignment clause, as well as the assignor's right to require a one-year lease upon any anniversary date of the tenancy. RCW 59.20.050. Furthermore, the Court of Appeals' narrow definition of "assignable" – meaning that modifications are prohibited – does not appear in the case law upon which it relies, nor its prior common law. In *Puget Sound Nat'l Bank v. Sate Dep't. of Revenue*, 123 Wn.2d 284, 868 P.2d 127 (1994) in support of their assignment argument. Br. of Appellant at 29-30. In *Puget Sound Nat'l,* car dealers assigned to a bank their retail installment

contracts with customers. *Id.* at 285-86. When some customers defaulted and the bank repossessed the cars at a loss, the bank claimed the sales tax refunds that would have been owed to the dealers. *Id.* The Department of Revenue argued that because the statute authorizing the sales tax refund, RCW 82.08.037, expressly provided the refund to the "seller," no refund was owed because the bank was not the seller. *Id.* at 288-89. This Court concluded that as an unrestricted assignee, the Bank assumed all of the right of the sellers, including the right to the sales tax refund. *Id.* at 291.

To suggest that *Puget Sound Nat'l* applies to the MHLTA and prohibits modification of lease rights upon assignment profoundly misreads that simple case. There is *no* indication in *Puget Sound Nat'l* that the original contracts at issue – or the assignment agreement – modified any of the lease terms, or that this Court forbade such modifications. This Court simply interpreted the contract and assignment agreement as written, giving all of the assignor's rights to the assignee. *Id.* This Court did not declare in *Puget Sound Nat'l*, nor has it ever declared, that two parties may not agree to lease modifications that are triggered upon assignment. In fact, the Court of Appeals held just the opposite in *McGahuey v. Hwang,* 104 Wn. App 176, 183, 15 P.3d 672 (2001), where it expressly acknowledged that the unique factual circumstances of the manufactured/mobile home landlord – tenant relationship does not require

that all original lease terms remain in force for the duration of any tenancy. 104 Wn. App. at 183.

An assignment clause is a contract provision, and "[p]arties may incorporate in their contracts any provisions which are not illegal or violative of public policy." *In re Marriage of Kinne,* 82 Wn.2d 360, 363, 510 P.2d 814 (1973). If two parties agree that certain provisions of the lease will change in the event of assignment, such an agreement should be permissible unless the resulting lease violates statute or public policy.

The Court of Appeals' interpretation is contradicted by ample authority on the subject of assignment. The essence of assignability is *not* that the assignee receives all of the exact same terms as in the original lease. Rather, assignment is the transfer to a third party of *all the assignor's interest* in property, leaving no reversionary interest in the assignor. 49 AM. JUR.2D 846-49, LANDLORD AND TENANT § 1077; *McDuffie v. Noonan*, 176 Wash. 436, 439, 29 P.2d 684 (1934). *See also Hartman Ranch Co. v. Associated Oil Co.,* 10 Cal.2d 232, 242-43, 73 P.2d 1163 (1937); *Gilman v. Nemetzm,* 203 Cal. App.2d 81, 86, 21 Cal. Rptr. 317 (1962); *Kmart Corp. v. Guastello*, 661 S.E.2d 790 (N.C. 2008); *Kennedy v. Gardner,* 170 N.C. App. 118, 121, 611 S.E.2d 480, 482 (2005); *Lamonts Apparel, Inc. v. SI-Lloyd Associates,* 157 Or. App. 44, 967 P.2d 905 (Or. 1998). If an instrument so transfers the lessee's interest,

"it constitutes an assignment regardless of its character and form." *Morrison v. Nelson,* 38 Wn.2d 649, 231 P.2d 335 (1951); 51 C.J.S., Landlord and Tenant, § 37, p. 553.[2] In *Kennedy,* the memorandum of assignment of lease stated in pertinent part: "Assignor ... hereby assigns, sets over and transfers to Assignee ... all of Assignor's right, title, and interest in and to the above-referenced lease for the premises ... including any and all addendums, amendments, extensions, rights of first refusal, options to purchase and modifications...." *Id.* at 122, 611 S.E.2d at 482-83 (emphasis added). The North Carolina Supreme Court held "[t]his is an absolute assignment" because "it leaves [the assignor] with no interest in the assigned property." *Id.* at 122, 611 S.E.2d at 483. Despite the fact that the lease contained modifications on assignment, it was nonetheless "assignable." *Id.*

Although the law generally favors free alienability of property, 49 AM.JUR.2D, LANDLORD AND TENANT, § 398 (1980), it is not a controversial proposition that provisions modifying a lease upon assignment are generally valid. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT (1980) § 8:15, at pp. 578-79. *See also,* 2 POWELL ON REAL PROPERTY, ¶ 246[1], at p. 372.97. Contractual

[2] A sublease, by contrast, involves the creation of a new tenancy between the sublessor (the original lessee) and the sublessee. *See Jaber v. Miller,* 219 Ark. 59, 239 S.W.2d 760, 761 (1951).

restrictions on the alienability of leasehold interests "are justified as reasonable protection of the interests of the lessor as to who shall possess and manage property in which he has a reversionary interest and from which he is deriving income." *Id.*

This Court has long held that parties may agree to modification of one or more lease terms upon assignment. *Franklin v. Fischer*, 34 Wn.2d 342, 208 P.2d 902 (1949). The Court of Appeals' suggestion that anything less that assignment under the same exact terms granted to the lessor is not an "assignment" is unfounded.

Congress has acknowledged the common law rule that parties may agree to modifications triggered by assignment. Apparently recognizing that such assignment clauses are commonplace, Congress in drafting the Bankruptcy Code expressly prohibited modifications of a lease triggered by assignment to benefit debtors and the bankruptcy trustee. The Code provision is specific, and *expressly* abrogates the common law rule allowing assignment clauses:

> Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or *modifies*,...such contract or lease..., such contract, lease, right, or obligation may not be terminated or *modified* under such provision because of the assumption or assignment of such contract or lease by the trustee.

11 U.S.C.A. § 365(f)(3) (West Supp. 1990) (emphasis added). Congress' stated purpose in prohibiting such provisions was "to strengthen the debtor's hand when dealing with provisions designed to prohibit, restrict or condition the assignment of an executory contract or unexpired lease." *In re David Orgell, Inc.*, 117 B.R. 574, 576 (Bkrtcy. C.D. Cal. 1990). Congress adopted this policy favoring the assumption and assignment of contracts as a means of assisting a debtor in its rehabilitation or liquidation effort. *In re Orgell,* 117 B.R. at 576. If provisions purporting to modify a lease upon assignment were *per se* invalid, this provision in the Bankruptcy Code would be superfluous. Therefore, such provisions are valid unless specifically and expressly prohibited by statute.

It is a rule of statutory construction that the Legislature is presumed to know the state of existing law when drafting a statute. *Price v. Kitsap Transit,* 125 Wn.2d 456, 463, 886 P.2d 556 (1994). A statute will not be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it. *Id.*

The Court of Appeals' definition of "assignment" is contrary to existing common law regarding assignment. This may be the result of confusion generated by authorities distinguishing between an assignment and a sublease. Some authorities distinguishing "assignment" from "subleasing," describe the distinction as "transfer for the full term" versus

"transfer for less than the full term." *See, e.g., 17 Wash. Prac., Real Estate* § 6.63 (2d ed.). However, this phrasing is imprecise, because it incorrectly suggests that an assignment must, by definition be for the remainder of the original term of the lease.

The bright line test for determining whether a conveyance by a tenant of leased premises is an assignment is *not* whether it is for the remainder of the assignor's original term. It is whether the tenant conveys his entire interest in the premises, without retaining any reversionary interest in the lease. 49 Am. Jur. 2d 846-49; Landlord and Tenant § 1077; *McDuffie v. Noonan*, 176 Wash. 436, 439, 29 P.2d 684 (1934). A sublease, on the other hand, is a conveyance in which the tenant retains some portion of the original lease obligations. *Christensen v. Tidewater Fibre Corp.,* 172 N.C. App. 575, 578, 616 S.E.2d 583, 586 (2005).

The Court of Appeals also incorrectly stated that the MHLTA "does not contain any limitation on the right" of tenants to assign their leases. *Little Mountain,* 146 Wn. App. at 560. This is patently incorrect. The MHLTA contains many restrictions on a tenant's right to transfer, including landlord notification, landlord consent, arrangement of a meeting between assignee and landlord, and compliance with fire and safety standards. RCW 59.20.073.

Nothing in the MHLTA expressly abrogates the common law rule that parties to a lease may agree to any modifications upon assignment, provided the resulting lease violates no law or public policy. The Court of Appeals erred in reading an abrogation of common law into the statute.

(3) Even If the Term "Assignable" Is Ambiguous, the Legislative History of The MHLTA Reveals the Legislature Rejected a Provision Requiring the Assigned Lease to Be for the Same Term

It is presumed that members of the Legislature are aware of the state of the law and of prior drafts of a bill at the time it is enacted. *State v. Frampton,* 95 Wn.2d 469, 477, 627 P.2d 922 (1981); *see also, State v. Fenter*, 89 Wn.2d 57, 569 P.2d 67 (1977); 2A C. SANDS, SUTHERLAND'S STATUTES AND STATUTORY CONSTRUCTION § 48.04 at 197 (4th ed. 1973). Therefore, this Court assumes that when the Legislature omits language from the final bill, that omission is intentional. *Id.* at 478.

The Legislature considered, but rejected, a provision that would have mandated any assignment to be for the remainder of the original lease term. The transfer provision of the MHLTA as originally drafted by the House included a provision affirmatively stating that the term of a transferred lease must be the same as the original lease term:

> NEW SECTION. Section 13. (1) No landlord shall deny any tenant the right to sell such tenant's mobile home within a park.... *The term of the transferred lease shall, at*

the option of the transferee, be for the remainder of the term of the rental agreement...."

1977 SB 2668; 1977 ex.s. c 279 § 7 (emphasis added). ***However, the final bill as passed omitted this provision.*** RCW 59.20.070 (1977).[3] Instead, the Legislature opted for more general language and not a mandate. *Id.*

Thus, the legislative history of the MHLTA weighs strongly against the interpretation of "assignment" as only "assignment for the same term as the original lease." The Legislature considered, but rejected, language that would expressly require that the transferred lease be for the remainder of the original lease term. It was not the Legislature's intent to prohibit modification of the lease term upon assignment.

Had the Washington Legislature intended to prohibit any provisions that modified the lease agreement upon assignment, it could have included such a specific prohibition against such modifications in the Act. It also could have left in the provision stating that the assignee had the option to choose whether the assigned lease was for the same term as the original lease. The Legislature did neither, and the Court of Appeals erred in reading that omitted language into the statute.

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[3] The provision governing MHLTA lease transfers was originally contained within RCW 59.20.070. 1977 ex.s. c 279 § 7. In 1981, the Legislature added RCW 59.20.073, which spelled out landlord and tenant obligations regarding transfers in more detail. 1981 c 304 § 20.

The Legislature rejected a provision that would have required assignments to be for the remainder of original term. The Court of Appeals has undone the Legislature's considered decision. The Legislature did not restrict the parties' ability to agree that a lease may be assignable for less than the full remaining term.

(4) The Court of Appeals' Decision Thwarts the Purpose of RCW 59.20.073 and Discourages Longer Term Rent-Controlled Leases

The Court of Appeals concluded that its interpretation of "assignable" comported with the purpose of the MHLTA "to protect mobile home owners." *Little Mountain,* 146 Wn. App. at 560.

However, neither the legislative history nor the common law has ever adopted such a narrow purpose for the MHLTA, and has instead sought to achieve a compromise and practical balance of the competing interests of the tenants of a manufactured home community, and the owner of the manufactured home community. House Bill Report, at p. 3, from 1993 Amendments; *McGahuey,* 104 Wn. App at 183. The Legislature has recognized that mobile and manufactured housing can stable and secure low-cost housing. RCW 59.22.010. In ruling as it did, the Court of Appeals thwarted a community owner's creative attempt to offer *more* than what the MHLTA requires, and thereby not only meet but exceed the Legislature's goals of providing stable and secure housing for a large

number of tenants, while still allowing the community to remain viable and ensure its longevity. Little Mountain believed that it was doing right by its tenants in offering 25-year rent controlled leases, but realized the park would got out of business without the assignment clause. The Court of Appeals has now assured that no owner of any manufactured home community in Washington will ever take the chance again to offer a lease with terms as generous as those at issue. This does not comport with a public policy of promoting stable and dependable housing.

Like the public policy behind the statute, nothing in the legislative history of the MHLTA suggests that the Legislature intended the outcome reached by the Court of Appeals here. In drafting the MHTLA, the Washington Legislature did not include a provision prohibiting modifications upon assignment. Instead, the Act simply provides that leases are "assignable," with restrictions that protect the landlord. RCW 59.20.073. In this way, the MHLTA differs from the Bankruptcy Code provision described above, which expressly nullifies assignment modification clauses.

This drafting distinction between the Bankruptcy Code and the MHTLA is significant but logical, because the policy purposes of the two acts are different. The goal of the Bankruptcy Code provision expressly prohibiting any modification upon assignment maximizes value to the

debtor's estate and thereby fulfills the Code's purpose of rehabilitating debtors. *In re Standor Jewelers West, Inc.*, 129 B.R. 200, 202 (9th Cir. BAP 1991); House Report No. 95-595, 95th Cong., 1st Sess. 349 (1977); Senate Report No. 95-989, 95th Cong., 2nd Sess. 59 (1978).

The goal of the MHLTA, on the other hand, is to provide long-term, stable, and dependable housing for manufactured home owners. *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wash. App. 210, 135 P.3d 499, *as amended on denial of reconsideration* (2006), *review denied*, 160 Wn.2d 1019, 163 P.3d 793 (2007). The purpose of RCW 59.20.073 is also to ensure that a landlord may not unreasonably restrict a tenant's sale of a mobile home. The MHTLA's purpose is not to maximize a tenant's return on sale of a mobile home.

Therefore, a lease assignable under RCW 59.20.073 does not violate the language or policy of the MHLTA as long as (1) the tenant is released from interest in the property and has no reversionary obligations, and (2) the assigned lease complies with the statute. Appendix A.

(5) Petitioners Should Be Awarded Attorney Fees

The appellate rules provide for attorney fees to the prevailing party on appeal if statute, contract, or equity provides it. RAP 18.1. The lease agreement in this case provides for attorney fees to the prevailing party. RCW 59.20.110 also provides a basis for an award of attorney fees and

costs: "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney fees and costs."

This is an action to enforce the provision of the lease, and arising out of RCW ch. 59.20. Little Mountain Estates respectfully requests that this Court award reasonable attorney fees and costs on appeal.

F. CONCLUSION

The Court of Appeals' published opinion has vastly constrained the bargaining power of both tenants and landlords and, in a case of first impression, misinterpreted the MHLTA. The Court of Appeals discarded an agreed-upon contractual provision that benefited and burdened each party, despite the fact that no law or public policy prohibited it.

Furthermore, the Court of Appeals injected into the statute a provision that was expressly rejected by the Legislature when drafting the bill. The Court of Appeals erred in its reading of RCW 59.20.073 and this Court's precedent.

This Court should reverse the Court of Appeals and reinstate the trial court's order. It should award attorney fees to the petitioners.

Dated this 31ST day of July, 2009.

Respectfully submitted,

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APPENDIX

SB 2668

SPONSORS: Senators Marsh, Francis and Buffington

COMMITTEE: Judiciary

Enacting a landlord/tenanct act for mobile home lots.

ANALYSIS AS OF MARCH 25, 1977

ISSUE:

Many mobile home park residents are in the unique position of owning their homes while renting the land on which the homes are placed. Because the Residential Landlord/Tenant Act applies only to dwelling units, protections in the act against arbitrary and retaliatory evictions do not apply to mobile home plot tenants.

Eviction is often more devastating for a mobile home plot tenant than for the traditional residential tenant because the tenant of a mobile home plot must not only move all of his or her personal possessions, but must also expend in the vicinity of $1,000 - $2,000 to move his or her mobile home and, what is sometimes even more difficult, find another place to move it to.

Senate Bill 2668 seeks to offer the mobile home plot renter protection against eviction during a rental agreement.

SUMMARY:

Senate Bill 2668 mandates that every tenant or prospective tenant of a mobile home plot be offered on and after the effective date of the act:

(1) a six-month written lease which will be automatically renewed unless:

(a) stated otherwise in the lease; or

(b) the landlord gives two months notice that the lease will not be renewed unless changes are made in the existing lease; or

(c) the landlord gives two months notice that the lease will not be renewed; or

(d) the tenant gives one month's notice of his or her intent not to renew.

or

(2) a month to month written lease with the six month lease option waived in writing.

The written rental agreement must be signed by both the landlord and tenant and is to contain the terms for payment of rent, a listing of any additional monthly charges, guest parking rules, the rules of the park, and the name and address of the landlord or his agent.

A tenancy may be terminated only for one of the following reasons and with the following time periods provided for compliance or eviction:

(1) "Serious or repeated violations of the material terms" of the parks rules by the tenant. The tenant must be given 15 days notice to comply or vacate.

(2) Nonpayment of rent or other charges. The tenant must be given 5 days notice to pay or vacate.

(3) If the tenant is convicted of a law violation which threatens the park tenants. The tenant must be given 15 days to vacate.

(4) Change of land use. A tenant must be given no less time to vacate than the remainder of his or her lease.

The bill also provides that tenants must receive itemized billings for charges that occur less frequently than monthly; that no fees may be charged for guest parking unless there is a violation of the guest parking rules or unless the parking extends for a period of time; that park rules may be amended during the term of the rental agreement only with the consent of the tenant; that a tenant may withdraw from a lease with 30 days notice if she has a change in employment but must pay rent for the term of the lease if the landlord cannot re-rent the plot; and that a tenant who is a member of the armed forces may withdraw from a lease with less than 30 days notice if reassignment orders do not permit greater notice.

COMMITTEE AMENDMENTS:

1. The term "lease" is deleted in section 1.

2. "Tenant" and "transient" are defined to distinguish the recreational or less permanent mobile home park tenant who desires a tenancy of less than 30 days from the tenant who makes a mobile home park his permanent residence. The transient is thereby not required to enter into either a 30-day or six month rental agreement.

3. For purposes of clarification, two clauses are added in section 4: "by the landlord" on line 20 and "and/or other

charges" on line 30. In addition, the tenant must now be convicted of a crime instead of a "law violation" which threatens the health, safety or welfare of other other tenants to be evicted; and "change of land use" is deleted as a permissible ground for eviction within the rental agreement period.

4. Section 6 provides for automatic renewal of rental agreements unless the original rental agreement specifies otherwise and if the landlord gives two months written notice of nonrenewal. The amendment substitutes "or" for "and" on line 6, thus providing for automatic nonrenewal if only one of these criteria is met.

DECLARATION OF SERVICE

On said day below I emailed and deposited in the U. S. mail a true and accurate copy of the following document: Supplemental Brief of Petitioner in Supreme Court Cause No. 82574-2, to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: July 31, 2009, at Tukwila, Washington.

Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick